

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1036, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, line 12, delete "IC 21-9-9.5," and insert "**IC 5-20-7**,".
- 2 Page 2, line 4, after "exceed" delete ":" and insert "**for all**
- 3 **taxpayers:**".
- 4 Page 2, line 8, delete "IC 21-9-9.5;" and insert "**IC 5-20-7**;".
- 5 Page 2, between lines 25 and 26, begin a new paragraph and insert:
- 6 "SECTION 3. IC 6-3.1-30.5 IS ADDED TO THE INDIANA CODE
- 7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 8 UPON PASSAGE]:
- 9 **Chapter 30.5. School Scholarship Tax Credit**
- 10 **Sec. 1. As used in this chapter, "credit" refers to a credit**
- 11 **granted under this chapter.**
- 12 **Sec. 2. As used in this chapter, "pass through entity" means:**
- 13 **(1) a corporation that is exempt from the adjusted gross**
- 14 **income tax under IC 6-3-2-2.8(2);**
- 15 **(2) a partnership;**
- 16 **(3) a trust;**
- 17 **(4) a limited liability company; or**
- 18 **(5) a limited liability partnership.**
- 19 **Sec. 3. As used in this chapter, "scholarship granting**
- 20 **organization" refers to an organization that:**
- 21 **(1) is exempt from federal income taxation under Section**

1 **501(c)(3) of the Internal Revenue Code; and**

2 **(2) conducts a school scholarship program.**

3 **Sec. 4. As used in this chapter, "school scholarship program"**
4 **refers to a scholarship program certified by the department under**
5 **IC 20-51.**

6 **Sec. 5. As used in this chapter, "state tax liability" means a**
7 **taxpayer's total tax liability that is incurred under:**

8 **(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);**

9 **(2) IC 6-5.5 (the financial institutions tax); and**

10 **(3) IC 27-1-18-2 (the insurance premiums tax);**

11 **as computed after the application of the credits that under**
12 **IC 6-3.1-1-2 are to be applied before the credit provided by this**
13 **chapter.**

14 **Sec. 6. As used in this chapter, "taxpayer" means an individual**
15 **or entity that has any state tax liability.**

16 **Sec. 7. A taxpayer that makes a contribution to a scholarship**
17 **granting organization for use by the scholarship granting**
18 **organization in a school scholarship program is entitled to a credit**
19 **against the taxpayer's state tax liability in the taxable year in**
20 **which the taxpayer makes the contribution.**

21 **Sec. 8. The amount of a taxpayer's credit is equal to fifty percent**
22 **(50%) of the amount of the contribution made to the scholarship**
23 **granting organization for a school scholarship program.**

24 **Sec. 9. A taxpayer is not entitled to a carryover, carryback, or**
25 **refund of an unused credit.**

26 **Sec. 10. If a pass through entity is entitled to a credit under**
27 **section 7 of this chapter but does not have state tax liability against**
28 **which the tax credit may be applied, a shareholder, partner, or**
29 **member of the pass through entity is entitled to a tax credit equal**
30 **to:**

31 **(1) the tax credit determined for the pass through entity for**
32 **the taxable year; multiplied by**

33 **(2) the percentage of the pass through entity's distributive**
34 **income to which the shareholder, partner, or member is**
35 **entitled.**

36 **Sec. 11. To apply a credit against the taxpayer's state tax**
37 **liability, a taxpayer must claim the credit on the taxpayer's annual**
38 **state tax return or returns in the manner prescribed by the**
39 **department. The taxpayer shall submit to the department the**
40 **information that the department determines is necessary for the**
41 **department to determine whether the taxpayer is eligible for the**
42 **credit.**

Sec. 12. A contribution shall be treated as having been made for use in a school scholarship program if:

(1) the contribution is made directly to a scholarship granting organization; and

(2) either:

(A) not later than the date of the contribution the taxpayer designates in writing to the scholarship granting organization that the contribution is to be used only for a school scholarship program; or

(B) the scholarship granting organization provides the taxpayer with written confirmation that the contribution will be dedicated solely for use in a school scholarship program.

Sec. 13. (a) The total amount of tax credits awarded under this chapter may not exceed five million dollars (\$5,000,000) in any state fiscal year.

(b) The department shall:

(1) record the time of filing of each application for a credit under this chapter; and

(2) approve the applications, if they otherwise qualify for a tax credit under this chapter, in the chronological order in which the applications are filed in the state fiscal year.

(c) When the total credits approved under this section equal the maximum amount allowable in any state fiscal year, an application filed after that time for the same fiscal year may not be approved. However, if an applicant for whom a credit has been approved fails to file any necessary information required by the department, an amount equal to the credit previously allowed or set aside for the applicant may be allowed to any subsequent applicant in the year. In addition, the department may, if the applicant so requests, approve a credit application, in whole or in part, with respect to the next succeeding state fiscal year.

Sec. 14. The department, on an Internet web site used by the department to provide information to the public, shall provide the following information:

(1) The application for the credit provided in this chapter.

(2) A timeline for receiving the credit provided in this chapter.

(3) The total amount of credits awarded under this chapter during the current calendar year.

Sec. 15. The department shall adopt rules under IC 4-22-2 to implement this chapter.

SECTION 4. IC 20-51 IS ADDED TO THE INDIANA CODE AS

A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
PASSAGE]:

ARTICLE 51. SCHOOL SCHOLARSHIPS

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Agreement" refers to an agreement between the department of state revenue and an applicant that applies for certification of a school scholarship program.

Sec. 3. "Contribution" refers to a contribution to a scholarship granting organization for use in a school scholarship program.

Sec. 4. (a) "Cost of education" means the tuition and fees that would otherwise be charged by a participating school to:

- (1) an eligible student; or
- (2) a parent of an eligible student.

(b) In the case of an eligible pupil who attends a public school, the term includes any transfer tuition charged to the eligible student or a parent of the eligible student.

Sec. 5. "Eligible student" refers to an individual who:

- (1) has legal settlement in Indiana;
- (2) is at least five (5) years of age and less than twenty-two (22) years of age on the date in the school year specified in IC 20-33-2-7;
- (3) either has been or is currently enrolled in a participating school;
- (4) either:

(A) is a member of a household with an annual income of not more than two hundred percent (200%) of the amount required for the individual to qualify for the federal free or reduced price lunch program; or

(B) received a scholarship under this article in the immediately preceding school year or the immediately preceding term of the current school year and qualified under clause (A) in the first year that the individual received a scholarship under this article; and

(5) meets at least one (1) of the following conditions:

(A) The individual is enrolling in kindergarten.

(B) The individual was enrolled in a public school during the school year preceding the first school year for which a scholarship granting organization provides a scholarship to the individual.

(C) The individual received a scholarship in the previous

year from a nonprofit scholarship granting organization that qualifies for certification as a school scholarship program.

(D) The individual received a school scholarship for the previous school year.

Sec. 6. (a) "Participating school" refers to a public or nonpublic school that:

(1) an eligible student is required to pay tuition or transfer tuition to attend;

(2) voluntarily agrees to enroll an eligible student;

(3) is accredited by either the state board or a national or regional accreditation agency that is recognized by the state board; and

(4) administers the tests under the Indiana statewide testing for educational progress (ISTEP) program or administers another nationally recognized and norm referenced assessment of the school's students.

(b) The term does not include a public school in a school corporation where the eligible student has legal settlement under IC 20-26-11.

Sec. 7. "Scholarship granting organization" refers to an organization that:

(1) is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(2) is organized at least in part to grant school scholarships.

Sec. 8. "School scholarship" refers to a grant to pay only the cost of education for an eligible student as determined for the school year for which the scholarship will be granted.

Chapter 2. Exchange of Information; Rules

Sec. 1. The department of state revenue shall maintain a publicly available list of the school scholarship programs certified by the department of state revenue. The list must contain names, addresses, and any other information that the department of state revenue determines is necessary for the public to determine which scholarship granting organizations conduct school scholarship programs. A current list must be posted on an Internet web site used by the department of state revenue to provide information to the public.

Chapter 3. Scholarship Granting Organizations; Certification; Administration of Contributions

Sec. 1. (a) A program qualifies for certification as a school scholarship program if:

(1) the program:

**(A) is administered by a scholarship granting organization;
and**

**(B) has the primary purpose of providing school
scholarships to eligible students; and**

**(2) the scholarship granting organization administering the
program:**

**(A) applies to the department of state revenue on the form
and in the manner prescribed by the department of state
revenue; and**

**(B) enters into an agreement with the department of state
revenue to comply with this article.**

**(b) A program may not be certified as a school scholarship
program if the program:**

**(1) limits a recipient of a school scholarship to attending
specific participating schools; or**

**(2) limits the ability of a recipient of a school scholarship to
change attendance from one (1) participating school to
another participating school.**

**Sec. 2. The department of state revenue shall certify all
programs that meet the qualifications under section 1 of this
chapter as school scholarship programs.**

**Sec. 3. An agreement entered into under section 1 of this chapter
between the department of state revenue and a scholarship
granting organization must require the scholarship granting
organization to do the following:**

**(1) Provide a receipt to taxpayers for contributions made to
the scholarship granting organization that will be used in a
school scholarship program. The department of state revenue
shall prescribe a standardized form for the receipt issued
under this subdivision. The receipt must indicate the value of
the contribution and portion of the contribution being
designated for use in a school scholarship program.**

**(2) Distribute at least ninety percent (90%) of the total
amount of contributions as school scholarships to eligible
students.**

**(3) Distribute one hundred percent (100%) of any income
earned on contributions as school scholarships to eligible
students.**

**(4) Conduct criminal background checks on all the
scholarship granting organization's employees and board
members and exclude from employment or governance any**

individual who might reasonably pose a risk to the appropriate use of contributed funds.

(5) Make the reports required by this chapter.

Sec. 4. An agreement entered into under section 1 of this chapter may not prohibit a scholarship granting organization from receiving contributions other than contributions described in section 3(1) of this chapter.

Sec. 5. An agreement entered into under section 1 of this chapter must prohibit a scholarship granting organization from distributing school scholarships for use by an eligible student to:

(1) enroll in a school that has:

(A) paid staff or board members; or

(B) relatives of paid staff or board members;

in common with the scholarship granting support organization;

(2) enroll in a school that the scholarship granting organization knows does not qualify as a participating school; or

(3) pay for the cost of education for a public school where the eligible student is entitled to enroll without the payment of tuition.

Sec. 6. (a) A scholarship granting organization certified under this chapter must publicly report to the department of state revenue by August 1 of each year the following information regarding the organization's scholarships awarded in the previous school year:

(1) The name and address of the scholarship granting organization.

(2) The total number and total dollar amount of contributions received during the previous school year.

(3) The:

(A) total number and total dollar amount of scholarships awarded during the previous school year; and

(B) total number and total dollar amount of school scholarships awarded during the previous school year.

The report must be certified under penalties of perjury by the chief executive officer of the scholarship granting organization.

(b) A scholarship granting organization certified under this chapter shall contract with an independent certified public accountant for an annual financial audit of the scholarship granting organization. The scholarship granting organization must provide a copy of the annual financial audit to the department and

1 must make the annual financial audit available to a member of the
2 public upon request.

3 Sec. 7. The department of state revenue shall prescribe a
4 standardized form for scholarship granting organizations to report
5 information required under this chapter.

6 Sec. 8. The department of state revenue may, in a proceeding
7 under IC 4-21.5, suspend or terminate the certification of an
8 organization as a scholarship granting organization if the
9 department of state revenue establishes that the scholarship
10 granting organization has intentionally and substantially failed to
11 comply with the requirements of this article or an agreement
12 entered into under this article.

13 Sec. 9. If the department of state revenue suspends or
14 terminates the certification of an organization as a scholarship
15 granting organization, the department of state revenue shall notify
16 affected eligible students and their parents of the decision as
17 quickly as possible. An eligible student affected by a suspension or
18 termination of a scholarship granting organization's certification
19 shall remain an eligible student under this article until the end of
20 the school year after the school year in which the scholarship
21 granting organization's certification is suspended or terminated,
22 regardless of whether the scholarship student currently meets the
23 definition of an eligible student.

24 Sec. 10. The department of state revenue may conduct either a
25 financial review or an audit of a scholarship granting organization
26 certified under this chapter if the department of state revenue has
27 evidence of fraud.

28 Sec. 11. The department of state revenue shall adopt rules under
29 IC 4-22-2 to implement this article."

30 Page 2, line 26, delete "IC 21-9-9.5" and insert "IC 5-20-7".

31 Page 2, line 29, delete "9.5." and insert "7".

32 Page 2, line 41, delete "written".

33 Page 3, delete lines 34 through 36.

34 Page 3, line 37, delete "9." and insert "8".

35 Page 4, line 5, delete "10." and insert "9".

36 Page 4, after line 8, begin a new paragraph and insert:

37 "SECTION 7. [EFFECTIVE UPON PASSAGE] The department
38 of state revenue may adopt temporary rules in the manner
39 provided in IC 4-22-2-37.1 for the adoption of emergency rules to
40 implement IC 20-51, as added by this act. A temporary rule
41 adopted under this SECTION expires on the earliest of the
42 following:

- 1 **(1) The date another temporary rule is adopted under this**
- 2 **SECTION that supersedes or repeals the previously adopted**
- 3 **temporary rule.**
- 4 **(2) The date that a permanent rule adopted under IC 4-22-2**
- 5 **supersedes or repeals a temporary rule adopted under this**
- 6 **SECTION.**
- 7 **(3) The date specified in the temporary rule.**
- 8 **(4) June 30, 2011.**
- 9 SECTION 8. [EFFECTIVE UPON PASSAGE] IC 6-3.1-30.5, as
- 10 **added by this act, applies to contributions made in taxable years**
- 11 **beginning after December 31, 2009.**
- 12 SECTION 9. **An emergency is declared for this act."**
- 13 Renumber all SECTIONS consecutively.
- (Reference is to HB 1036 as printed February 20, 2009.)

and when so amended that said bill do pass .

Committee Vote: Yeas 9, Nays 2.

Senator Hershman, Chairperson